petitions the certificate sets out particular reasons why it is considered that there is a reasonable ground for appeal, and these reasons disclose that the certifying counsel has not appreciated, or allowed for, the fact that the Judicial Committee cannot be asked to review the facts of a criminal case, or set aside conclusions of fact at which the tribunal has arrived. In all such cases an appeal on such grounds is useless, and is, indeed, an abuse of the process of the Court.

It may be of assistance to counsel who are considering whether they are justified in certifying that a petition of appeal in a criminal case might reasonably be presented, to give illustrations by way of contrast, of what are the limited but very important grounds on which a petition in a criminal case may properly be presented. Broadly speaking, the Judicial Committee will only interfere where there has been an infringement of the essential principles of justice. An obvious example would be a conviction following a trial where it could be seriously contended that there was a refusal to hear the case of the accused, or where the trial took place in his absence, or where he was not allowed to call relevant witnesses. Similarly, of course, if the tribunal was shown to have been corrupt, or not properly constituted, or incapable of understanding the proceedings because of the language in which the proceedings were conducted. Another and obvious example would arise if the Court had no jurisdiction either to try the crime, or to pass the sentence. These limitations upon the interference of the Judicial Committee with convictions arrived at by tribunals charged with criminal jurisdiction beyond the seas have been again and again laid down in the clearest terms at this Board. It is sufficient to quote Lord Watson's words, in *In re Dillet*, (1) that "the rule has been repeatedly laid down, has been invariably followed, that Her Majesty will not review or interfere with the course of criminal proceedings, unless it is shown that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been down"; or, as Lord Dunedin said, (2) "There must be something so irregular, or so outrageous, as to shake the very basis of justice."

Their Lordships have thought it right on this occasion to re-state these principles at some length in the hope that it will assist practitioners, who are asked to certify in support of a proposed petition, in determining whether it is in accordance with their professional duty to do so. They trust that these observations will have a beneficent effect. If, indeed, after this explanation and warning petitions continue to reach the Board which never should have been certified, it will be necessary to call the attention of the suitable authorities in the area from which such petitions come to the continued disregard of the rule by the certifying counsel concerned. Their Lordships must make it plain that no reflection is involved upon the conduct of counsel or solicitors representing these petitioners before the Board today: they cannot properly be held responsible for improper certificates signed by other counsel in India.

NARAYANI AMMA (f) v. MOHAMED DIN

[O.C.J. (Smith J.) September 6, 1957]

[K.L. — Civil Suit No. 124 of 1956]

Workmen's Compensation — Alternative remedies — Recovery of compensation — Conditional acceptance — Right of action against 3rd party not to be prejudiced — Workmen's Compensation Ordinance, 1952, s.20(a) — Quantum of damages.

The question at issue in this case was whether acceptance of compensation under the Ordinance precluded the plaintiff from recovering damages in an action against the third party. The plaintiff before accepting payment from her deceased husband's employer executed and delivered a document in the following terms: "I wish to claim for compensation under the Workmen's Compensation Ordinance. In the event, I or on my behalf the employer takes civil action against the owner of the vehicle for damages, I undertake to indemnify the employer, i.e. I agree to refund the amount paid to me by the employer. The other dependants also will undertake to refund the amount in the event the claim is successful."

Held: (1) in accepting payment on the conditions mentioned the plaintiff had not "recovered" compensation within section 20(a) of the Workmen's Compensation Ordinance (*Elligott v. Nebbett* (1) followed);

(2) the Court is not bound by the sum offered to, and accepted by, the plaintiff, because such acceptance is subject to the consent of the Court, there being minor beneficiaries.

Cases referred to:—

(1) *Elligott v. Nebbett* (1948) 1 All E.R. 514.

(2) *Kelly v. North British Rly. Co.* 9 B.W.C.C. 422, 427.

(3) *Oliver v. Nautilus S.S. Co.* (1903) 2 K.B. 639, 650.

Also cited in argument were: *Wright v. Lindsay* 5 B.W.C.C. 531 and *Frame v. Taylor* 11 B.W.C.C. 356.

WORKMEN'S COMPENSATION.

Miss P. G. Lim for the plaintiff.

Bentley for the defendant.

Smith J.: The sole question in this case is whether in respect of her husband's death the plaintiff has accepted compensation under the Workmen's Compensation Ordinance, 1952 (No. 85 of 1952) for the purposes of section 20 (a) thereof.

The deceased, an employee of the Central Electricity Board, was knocked down and killed by an United Kingdom War Department vehicle driven by the defendant. The plaintiff accepted a sum of money from the deceased's employer, the Central Electricity Board, and before accepting the money executed and delivered a document (Exhibit P2) in the following terms:—

"I wish to claim for compensation under the Workmen's Compensation Ordinance.

In the event, I or on my behalf the employer takes civil action against the owner of the vehicle for damages, I undertake to indemnify the employer, i.e. I agree to refund the amount paid to me by the employer.

The other dependants also will undertake to refund the amount in the event the claim is successful."

The plaintiff did not sue the "owner of the vehicle" who was admitted to be Her Majesty the Queen but sued the defendant who was her servant and in control of the vehicle at the time of the accident.

Section 20 (a) of our Ordinance is generally *in pari materia* with section 30 (1) of the United Kingdom Workmen's Compensation Act, 1925. The plaintiff claimed that her case was similar to the United Kingdom case of *Elligott v. Nebbett* [1] the headnote to which reads as follows:—

"An injured workman received payments from his employer on the understanding that they were not to prejudice his right of action at common law against a third party in respect of his injury, and would be repayable by him in the event of his succeeding in such action, but would otherwise be treated as payments of workmen's compensation.

Held: in accepting the payments on the conditions mentioned the workman had not "recovered compensation" within section 30(1) of the Workmen's Compensation Act, 1925, and so was not precluded by that sub-section from recovering damages in an action against the third party."

The defendant argues that since the plaintiff has not sued the owner of the vehicle in accordance with the terms of the undertaking she cannot claim to have accepted compensation conditionally. It was admitted by the defendant and agreed by the plaintiff (and for the purposes of this case I am prepared to accept it) that it is not possible in these Courts to sue Her Majesty the Queen. It becomes therefore a question of interpreting the undertaking in the light of the facts of the case as a whole. The plaintiff relied on the assistance of the Assistant Commissioner for Labour in this matter. It appears to me in the light of the facts of this case as a whole that the undertaking meant that if the plaintiff succeeded in recovering damages she would repay the employer the money advanced. What the Court has to do is to give "a fair construction of the letter": see *Kelly v. North British Railway Company* [2] (*per* Lord Mackenzie). I am satisfied that the receipt of money by the plaintiff was "qualified" within the meaning used by Vaughan Williams, L.J., in *Oliver v. Nautilus Steam Shipping Company*. [3]

I therefore find for the plaintiff. The next question which I have to consider is the quantum of damages. I do not consider that I am in any way bound by the sum offered to the plaintiff and accepted by her because any such acceptance is subject to the consent of the Court, there being minor beneficiaries. It appears that the deceased contributed about $100 per month to the maintenance of his dependants. This would probably have gone on for at least the next ten years. The figure of $12,000 for general damages is therefore reasonable. To this I will add the $100 special damages, $150 funeral expenses and the plaintiff's taxed costs.

The sum of $12,000 I distribute amongst the dependants in the following shares:—

Plaintiff	$ 4,250.00
Mother	750.00
Eldest son	1,000.00
Younger son	2,000.00
Youngest son	4,000.00

The allocation to the little children is based on a reckoning that the father would have contributed about $25 per month to the maintenance of each until he attained the age of 16. In making this award I have taken into consideration the benefits which the family has received by way of compassionate gratuities and refund of Employees Provident Fund.

I award, therefore, to the plaintiff $12,000 general damages, $100 special damages, $150 funeral expenses (i.e. a total of $12,250) and her taxed costs.

Order accordingly.

Solicitors: *Sen & Lim.*